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Where the proof showed that a sunken vessel after being raised was worth $1,700 but being sold *pendente lite* she brought only $792, and that libelant actually expended $568.95, under circumstances which would ordinarily have justified an allowance of one-half the property, the court only allowed one-half the net proceeds in the registry. bid.

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The proceeding need not be in the name of the State; it is the right and duty of members of the bar to file the necessary information against any attorney who is guilty of improper practices in his profession; neither is a formal or technical description of the act complained of requisite to the validity of such a proceeding. Ibid.

The words "misdemeanor in his professional capacity," in the Missouri statute as to attorneys at law is not used in the technical sense of offenses punishable by fine and imprisonment in jail, but as the equivalent of professional misbehavior. Ibid.

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A contract ior the sale and purchase of personal property which the vendor expects to buy hereafter is good if an actual transfer of property is intended; *aliter* if the parties contemplate that, at the time fixed for delivery, the purchaser shall merely receive or pay the difference between the contract and the market price. Gregory v. Wendell, 115.

The form of the contract is not conclusive on its face; it is for the jury to determine, whether an actual *bona fide* sale, or a mere scheme to gamble upon prices, was intended. Ibid.

If the agreement contemplated the actual purchase and delivery of grain, and such a purchase was in fact made, then a margin paid to cover any loss which the party agreeing to deliver might suffer or become responsible for on account of a decline in the price or value of the grain purchased, can not, to the extent of such loss, be recovered back. Ibid.

If the intention was merely to make a settlement of the difference between the contract and the market price, such agreement being void as against public policy, and both parties being equally in the wrong, the law would assist neither, and the amount paid over as a margin could not be recovered back. Ibid.

If one party acting in good faith, authorizes another to purchase grain for him, actually deliverable at a future day, and the other party, without being induced into any misunderstanding, makes no purchase, relying upon the theory that the difference in price only should be paid, then the first party upon discovering the facts can repudiate the contract and recover back the amount advanced. Ibid.

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Where a sheriff, in selling real estate under an execution, makes a statement, in good faith and without any intent to deceive, to the effect that no incumbrance exists upon the land, except the wife's dower in same, and it turns out that an estate of homestead exists in the land which, however, at the time was not known to the sheriff, an action of tort, in the nature of deceit, cannot be maintained against the sheriff by one who relied upon the representations and bought in the property at the sale. Tucker v. White, 67.

Where one has induced another by false representations to enter into partnership with him, equity will relieve, 344.

When contract obtained by false representations will not be set aside, 345.

One induced to sell by fraud and false pretenses may avoid the contract, but if the buyer in the meantime has parted with the thing sold to an innocent purchaser, the title of the latter cannot be defeated by the original seller, 403.

Where goods are fraudulently obtained on credit, the seller may rescind the contract of sale *in toto*, and bring trover or replevin for the goods before the time of credit has expired. But to sue for the price of the goods sold is a waiver of the tort, and an affirmance of the sale, and if brought before the expiration of the time of credit, the action is premature, 427.

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FRAUD.

If a party having charge of the property of others, so confounds it with his own that the line of distinction can not be traced, all the inconvenience of the confusion is thrown upon the party who produced it, and it is for him to distinguish his own property or lose it. Jewett v. Dringer, with note, 88.

A junk dealer, by fraudulent collusion with the employees of a railroad corporation, obtained large quantities of old iron, etc., at much less than its actual weight or value. On delivery it was thrown indiscriminately on other heaps of old iron, etc., belonging to him, so as to be indistinguishable. *Held*, that he must forfeit the whole mass to the company. Ibid.

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Suit on guardian's bond; conclusiveness of settlements, 285.

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Selling or assigning away the property, including choses in action of the ward, by the guardian for his own use, a conversion. Ibid.

Where the assets converted are the proceeds of real estate of the ward, only the additional bond given to secure such proceeds is rendered liable by such conversion. Ibid,

Where a guardian has converted the assets of his ward, redress must be sought upon his bond in force at the time of the conversion. Ibid,

In a suit on such bond the plaintiff may go behind the several reports made by the guardian and inquire into the real condition, from time to time, of the assets which had come into the hands of such guardian, 336.

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HOMESTEADS AND EXEMPTIONS.

Widow's right to homestead in her deceased husband's estate is determined by the law in force at date of husband's death, without regard to changes subsequently made, although such change is made prior to application for homestead. Brown v. Stratton, 46.

Whilst a marriage *de jure* exists, the husband is a "head of a family" though composed only of his wife who has left him, and is living apart from him at his death. Ibid.

Fact that such homesteader, after such abandonment, rents out the homestead and permits the tenant and his family to occupy the house situate thereon, reserving only one room for himself, does not deprive him of the character of a "head of family" under the homestead act. Ibid.

Where the title to the tract upon which the house of the homesteader is situate ceases at his death, the homestead right is not thereby extinguished, but his widow may claim homestead in adjoining and contiguous tracts used therewith, in the full quantity and quality allowed by the statute. Ibid.

In a suit by a widow out of possession against an administrator of her deceased husband, to have her rights of homestead determined in the real estate of her deceased husband, the probate court may order possession of the homestead to which she is entitled, to be delivered to her. An action of ejectment is not necessary in such case. Ibid.

Construction of terms "other articles and necessaries" and "wearing apparel," as used in the bankrupt law, 86.

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Partition of homestead, 157.

Motion to quash sheriff's return setting off exemption, the proper proceeding when the exemption can not be claimed against judgment on which the execution issued, 284.

A wife has power to ratify a defective and void conveyance of her husband wherever her husband could ratify such an act, 407.

School property not subject to execution for debt, and equity will enjoin sale thereunder, 426.

A married man, whose wife has deserted him in another State, who removes to Missouri, and maintains improper relations with another woman, who lives with him here, is a housekeeper and "head of a family," and as such, is entitled to claim homestead exemption in house and lot used and occupied by himself and paramour. Whitehead v. Tapp, 461.

Right of minor children to occupy homestead after death of householder. Loeb v. McMahon, 492.

HOMESTEADS AND EXEMPTIONS—Continued.

The wife of A is seized of property in her own right, which they occupy with their children as a homestead. A's wife dies and he marries again. Shortly afterwards, A executes a mortgage upon the premises, and thereafter upon default of payment the property is sold, and the purchaser sues for possession. *Held*, on a bill filed by the minor children to enjoin the prosecution of said suit and to have declared void the sale under the trust deed, that their homestead right in the premises, until they arrive at the age of twenty-one, is superior to the right of the husband as tenant by the curtesy conveyed to a third person. Loeb v. McMahon, 492.

Effect of statute providing that no conveyance of homestead shall be valid without signature of wife thereto, 506.

HOMICIDE.

A struck B with his first knocking him down, whereby he was trampled upon by a horse and killed. *Held*, that he was not guilty of manslaughter, 119

Advising another to commit suicide amounts to murder if advice is followed, 203.

The words "other felony," used in the section of the statute specifying the kinds of murder which constitute that crime in the first degree (1 Wag. Stat., p 445, sec. 1), refer to some collateral felony, and not to those acts of personal violence to the deceased which are necessary and constituent elements of the homicide itself, and are, therefore, merged in it, and which do not when consummated, constitute an offense distinct from homicide. State v. Shock, with note by Hon. J. H. Shanklin, 207.

As the first section of the statute includes only such murders as were murders at common law, can the words "other felony" be held to include offenses which were not felonies at common law, *quære?* Ibid.

The doctrine of the case of State v. Green, 66 Mo., 631, which is to the effect that an indictment charging a defendant with a willful, deliberate and premeditated murder, is supported by proof of a murder committed in the perpetration or attempt, to perpetrate a collateral felony, commented on and approved. Ibid.

One who in trying to frighten a female by snapping a revolver at her kills her, is guilty of manslaughter, 407.

HUSBAND AND WIFE.

[See also DIVORCE; HOMESTEADS AND EXEMPTIONS; MARRIAGE.]

Married woman suing as administratrix entitled to exception in favor of coverture contained in the statute of limitations, 41.

Reformation of the Deed of a Married Woman. Leading article by "F." 42.

Married woman assuming mortgage on real estate conveyed to her liable theron, 74.

Husband bound by covenants in deed conveying separate property of wife, 79.

Effect of deed and mortgage of married woman, 75.

The real estate of a bankrupt was sold by the assignee, at public sale, in pursuance of an order of the bankruptcy court directing the same to be made, subject to the lien of a certain mortgage, but free and discharged from all other liens and incumbrances. *Held*, that the dower of the bankrupt's wife was not divested by the sale. Lazear v. Porter, 126.

Conveyance by married woman, over eighteen and under twenty-one years of age, in which husband joins, can not be avoided on ground of infancy of *feme covert*, 178.

Gift by husband to wife; subsequent chattel mortgage to creditors; change of possession, 197.

Post nuptial contract between husband and wife will not be enforced against creditor of husband, when, 216.

Conveyance by insolvent husband to wife of lands purchased in his name with separate estate of wife not in fraud of creditors, 233.

Effect of judgment by default against married woman; estoppel, 238.

The expenses of the funeral of a wife must be paid by the husband and cannot come out of the wife's estate, 241.

Liability of husband for board of wife and child living apart from him against his will, 266.

Custody of children; right of wife after death of husband, 265.

Effect of husband's doing business with separate property of wife, 283.

In February, 1873, B, a widower residing in Kansas, corresponded with L, a widow residing in Indiana, with a view to marriage. In such correspondence, he represented that he owned two good farms in Kansas. In April, 1873, he executed a voluntary conveyance of the farms to two minor children of his, then residing with him. In May, 1873, he visited Indiana and there became engaged to L, and in August, 1873, they were married. The deed was not recorded until five days after the marriage, and L knew nothing of its existence until some years

HUSBAND AND WIFE—Continued.

thereafter. After the marriage they lived together as husband and wife, and he made ample provision for her support, as well as the support of her two children by her former husband. No evidence was given of the amount of B's property at the time of said conveyance or since. *Held*, that a judgment against her in an action to set aside such conveyance as a fraud upon her martial rights was not, under the circumstances, erroneous, and must be affirmed. Butler v. Butler, 295.

Would any voluntary ante-nuptial conveyance by either husband or wife be, under the laws of Kansas, a fraud upon the martial rights of the other party, *quære*. Ibid.

Under the Married Woman's Act of Illinois (act of March 27, 1869), the specific performance of a wife's contract to convey to her husband her sole and separate estate can not be decreed by a court of equity. Hogan v. Hogan, 316.

Right of widow to alienate her real estate, 325.

Personal property belonging to wife sold by husband; title, 326.

Liability of husband for debts of wife after separation by mutual consent, 365.

Working a farm a "separate business" under Massachusetts statute, 386.

The *gravamen* of the action for *crim. con.* is the criminal conversation, and the husband can not, if he fail to prove that, recover therein for the loss of his wife's society, even though caused by defendant, 407.

Husband permitting his wife to sue for expenses incurred while suffering from personal injuries, is estopped from afterwards claiming upon the same cause of action, 407.

When deed from husband to wife will be enforced, 424.

Rents and profits of a married woman's separate estate can not be subjected to the payment of her note, although, by the note itself, she agreed to pay it from her own separate property, 424.

Proof that the prisoner was a married woman, and that the criminal act was done in the presence of her husband, raises a presumption of coercion, which may be rebutted by proof that the act was done while she was not so immediately near him as to be under his control. State v. Fitzgerald, 460.

An agreement to live separately is not illegal and will be enforced, 462.

A wife may maintain an action for the loss of the society and companionship of her husband, against one who wrongfully induces and procures her husband to abandon or send her away. But the acts of defendant causing the injury must have been malicious. Westlake v. Westlake, 473.

ICE.

Conversion of, by permitting it to melt, 119.

IDEM SONANS.

[See CRIMINAL LAW AND PROCEDURE.]

ILLEGAL CONTRACTS.

[See CONTRACTS; NEGOTIABLE and ASSIGNABLE PAPER.]

INDIANS.

The Cherokee tribe of Indians hold their lands by a title different from the Indian title by occupancy. They derived it by grant from the United States. *It is a base, qualified or determinable* fee, without the right of reversion, but only a possibility of reversion in the United States. United States v. Reese, 453.

The lands of the Cherokee tribe of Indians can not, therefore, be held to be "lands of the United States," in the sense of the language used in section 5388 of the Revised Statutes of the United States. Ibid.

INDICTMENTS.

[See CRIMINAL LAW AND PROCEDURE and the various special titles.]

INFANCY.

Where infant who had given a promissory note paid part of it when he became of age, and afterwards by will directed his "just debts" to be paid, estate held not not liable for balance of note, 24.

Infants; wards of court; ante-nuptial agreement as to religion; parental right to control children's education; personal examination of young children by court, 55.

Conveyance by married woman over eighteen, and under twenty-one years of age, can not be avoided on grounds of infancy of *feme covert*, 178.

Real estate of infant can not be subjected to payment of board and tuition by contract of father, 216.

Custody of children; rights of wife after death of husband, 265.

At what age infants' responsibility for negligence commences, 306.

INFANCY—Continued.

Disaffirmance of deed by infant; what necessary to validity of second conveyance, 325.

Money voluntarily paid by minor under contract from which he has derived no benefit may be recovered back. Shurtleff v. Millard, 419.

When a minor sues for the value of work done under a contract which he has repudiated, he may recover on *quantum meruit* the value of his services, less the estimated injury to the defendant arising from the broken contract, *semble*. Ibid.

The conditions of an auction sale required $180 to be paid at the time of sale by a purchaser. S, a minor, bid off the pr perty, paid $40 of the required $180, made a default in paying the balance, and repudiated the contract of purchase. The property was again advertised and sold. Whereupon S, still a minor, brought assumpsit for the $40 paid by him. *Held*, that he was entitled to recover. *Held*, further, that the defendant was not entitled to deduct from the $40 sued for, the expenses imposed on him by the plaintiff's act. Ibid.

What is meant by "maturity" of female, 464.

INJUNCTION.

[See also NUISANCE; WAGERS.]

To enjoin prosecution of action in foreign country, 21.

To restrain publication of threatened libel, 61.

Vexatious bringing of suits may be enjoined, 366.

INNKEEPER.

[See BAILMENTS.]

INSANITY.

[See FALSE IMPRISONMENT.]

Record of appellate court adjudging him insane four years previous, admissible under plea of insanity in criminal case, 156.

Suicide as evidence of, 222.

Innocent purchaser from lunatic before inquest, 285.

Settlement of pauper not affected by, 407.

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Averments of conditions precedent in action on policy, 99.

Insurer estopped from denying truth of representations made by agent, 99.

Construction of "unoccupied" in policy, 285.

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Mortgagor and mortgagee of chattels have insurable interests therein, 325.

Misrepresentations as to value of article insured — an oil painting, 345.

Loss payable to one to whom policy not issued, 446.

Effect of covenant of other insurance, 446.

False representations may avoid policy though they are not warranties, 506.

Demand for additional proofs not waiver of false representations, when, 506.

Life Insurance.

Construction of endowment policy; forfeiture, 17.

When license of company to transact business has been revoked, money paid agent as premium, in ignorance of such revocation, may be recovered back, 18.

If policy issued is different from what agent represented it would be, premium may be recovered back, 78.

One not a party to a life policy cannot avoid it for fraud, or recover back premiums, even though he caused the insurance to be effected and paid the premiums, 78.

A single woman, dependent on her brother, has an insurable interest in his life, 204.

A circular addressed by a company to its shareholders, stated that it would not insist upon forfeiture of its policies because of non-payment of interest thereon: *Held*, a waiver of the right to insist on a forfeiture for non-payment of interest which was available to policyholders in a court of law, and that therefore there was no necessity for equity to interpose to enjoin the company from setting up the forfeiture by way of defence in an action at law, 241.

Construction of condition that assured must be temperate, 326.

Circulars issued by life insurance companies as waivers of conditions in policies, 349.

Claims on life policies matured by death, and claims on endowment policies, on which have been paid all premiums that could be required had the company continued to be solvent, should be paid by the receiver of an insolvent mutual company in the order of the death of the party insured, and the time stipulated for the payment of said endowment policies. Vanatta v. New Jersey Ins. Co., 440.

INSURANCE LAW—Continued.

Living policy holders in an insolvent mutual company, have no surrender value attached to their policies, but are liable to be called upon to make up assets sufficient to pay all death claims and endowment policies due before the decreed insolvency of the company. Ibid.

Existing policy holders cannot use their policies as offsets to claims against them for money borrowed of the company. Ibid.

The not fairly answering a question as to proposals made to other offices is a concealment of a material fact sufficient to avoid the contract, 462.

Where there was appended to the question, and signed by the proposer, a declaration that the above written particulars were true, and an agreement that they should be the basis of the contract: *Held*, that the proposer could not contend that any question was not material, 462.

Waiver of forfeiture for non-payment of premium, 465.

Marine Insurance.

What is a deviation, and its effect, 199.

Vessel "at sea" within terms of policy when in foreign port against will of master, 204.

Proof of loss; waiver, 505.

Where a vessel is lost by a peril insured against, insurer liable, although loss might have been avoided by the exercise of care, 505.

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Voluntary payment of more than legal rate; excess cannot be recovered back, 199.

The allowance of compound interest, 204.

Interest can be implied on security only at statutory rate, 218.

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Where a security is originally void for usury, another security substituted therefor is still affected by the original usury, 371.

Usury law cannot be evaded by devices, 371.

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Retroactive Effect of Statutes Abolishing Usury Laws. Article by W. P. Wade, Esq., 430.

One of two executors loaned moneys of the estate on bond and mortgage, reserving usury thereon, and appropriating it to his own use. On foreclosure by executors on behalf of estate: *Held*, that such usury could be set up as a defense, 508.

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That return of service on an original notice fails to show date of such service will not render the judgment based thereon, subject to collateral attack, 98.

A motion to set aside judgment made four years after judgment rendered, is a collateral proceeding, and not a direct attack upon the judgment, 98.

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That an action to set aside a judgment on the ground that it was obtained by perjury or fraud is not maintainable, *semble*. Flower v. Lloyd, 415.

In an action on a judgment of a foreign court of limited jurisdiction, its jurisdiction in the case must be averred, 427.

In a suit upon the official bond of a justice of the peace, alleging the fraudulent entry of a judgment in favor of the relator for $66, when it should have been for $166: *Held*, that the judgment was conclusive and could not be attacked collaterally, either in a pleading or by evidence, 465.

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That plaintiff was defeated in former action of replevin, because necessary demand had not been made, does not estop him from maintaining a second action, 39.

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Valid judgment conclusive on parties and privies; illustration, 137.

A person is not concluded by a judgment or decree rendered in a judicial proceeding, he at the time having no legal capacity to sue or defend, In an action by one formerly a slave for false imprisonment: *Held*, that the plaintiff was not bound by a decree of a Kentucky court adjudging her to be a slave, for the reason that by the law of that State a slave was not a competent party to a suit. Wood v. Ward, 188.

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Foreclosure of mortgage; sale of mill and machinery, real estate, and water power together, when proper, 175.

The rule of *caveat emptor* applies to a sheriff's sale; hence a purchaser at such a sale can not object to taking a deed, and paying the purchase-money, on account of a defect in title when the sale is fair 471.

A sale by a sheriff, to satisfy an execution, of goods locked up in an apartment of a house, and not exhibited to the bidders, is void, 471.

Reversal of judgment or decree, under which a sale is made, does not affect the title acquired by the purchaser at the sale. The reversal is no ground for quashing the sale, 286.

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This rule applies when the purchaser is plaintiff in the reversed judgment the same as if he were a stranger. Ibid.

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One suit in equity will not lie to enjoin the execution of process issued in another such suit, whether the second suit is brought in the same or another court, by a party or by a stranger to the first, 325.

Property in custody of another State court may be replevied; circuit and district courts of State are co-ordinate tribunals created by the same power, and there is not the reason for jealously guarding them from interference from each other in matters of jurisdiction that exists between the Federal and State courts, 405.

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Construction of covenant "not to affix or permit any outward mark or show of business to be affixed to the premises," 385.

A clause in a building agreement that until the lease is executed the intended lessee shall hold the land at the rent and subject to the conditions to be contained in the lease, creates a liability on the part of the intended lessee to pay the sum reserved by way of rent, although no tenancy has actually existed, 403.

A covenant in a lease not to carry on any "business" nor permit any annoyance, broken by use of premises for hospital, 423.

A condition in a lease to pay all "assessments" does not include taxes, 427.

Covenant with the "owners or owner" of certain land; a lessee held an "owner" within the covenant, 462.

A lessee can only maintain an action for the rent of leased premises against his assignee after he has paid the lessor for breach of the covenants of the lease by the assignee. 344.

Although a lease of real estate need not be under seal, yet where it is so made an indorsement on the back of such lease made afterwards, and signed by the lessor for the reduction of the rent provided for in the lease, can not be allowed in evidence to vary the terms of the lease. Loach v. Farnum, 352.

Evidence of payment and receipt of the reduced rent for three months after the making of the indorsement by the lessor, is not admissible to vary the original contract. Ibid.

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That one who sells property knows that it will be put to an illegal use will not deprive him of the right to enforce a lien upon the property in the hands of an officer having it in custody, 498.
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Statute of March 16, 1869, requiring actions for the enforcement of rights of individuals under acts of incorporation or by operation of law, which accrued prior to June 1, 1865, to be brought before the 1st of January, 1870, does not affect claims against estates when the State law gives a certain time for administrators to ascertain the condition of the estate and creditors to file their claims. Mills v. Scott, 392.

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A, a salesman, contracted with B, a clothing merchant, to work for him for a term of three years, at a stated salary. Shortly after A entered upon his work, he was arrested and imprisoned for two weeks; *Held*, that this was an abandonment of the contract by A, which precluded him from recovering damages for B's refusal to take him back after his release. Leopold v. Salkey, 372.

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Mortgages of chattels, mortgagor remaining in possession, 159, 346.

Mortgage of personalty invalid against subsequent mortgagee where goods remain in possession of mortgagor, unless proved or acknowledged, 177.

Construction of proviso allowing mortgagee to take possession and sell, 236.

A mortgage upon a stated quantity of mixed logs in the drive is void for uncertainty as against third parties who have acquired rights, if it does not furnish the *data* for separating the mortgaged logs from the mass, Richardson v. Alpena Lumber Co., 297.

Of Realty.

Where a bidder, at a public sale of real estate under a mortgage, transfers his bids to another and directs the deed to be made to such person, if there be no fraud in the transaction, and no loss to the mortgagee thereby, it can not be set up in action of ejectment against remote purchasers without any notice of the irregularity to defeat their title. Johnson v. Watson, 26.

Deed with contract of defeasance constitutes a mortgage, 39.

In a foreclosure suit, in which plaintiff seeks to hold a vendee upon a clause in the deed in which vendee has assumed to pay a mortgage debt, the action is upon the contract of assumption and not upon the note. Any defense may be given by defendant, though the note be negotiable, and plaintiff an innocent holder. Mansur v. Bartholomew, 72.

A person who takes a mortgage to secure a pre-existing debt, the time of payment not being extended, or nothing of value being parted with, is not a "purchaser for a valuable consideration"; but otherwise if the time of payment is extended in consideration of obtaining the mortgage. Gilchrist v. Gough, 166.

Strict foreclosure of mortgage allowed in Illinois, only in extraordinary cases, 217.

MORTGAGE—Continued.

A mortgagee of certain property transferred the mortgage and certain notes which it was given to secure for a valuable consideration to C, and afterwards entered satisfaction of the mortgage upon the proper record. On the same day, but after the entry of the satisfaction, the mortgagor conveyed the property covered by the mortgage to A for a valuable consideration, A at the time he received the conveyance having no knowledge that C held the mortgage and notes, nor that the mortgagee had no authority to enter the satisfaction on the record. *Held*, that the rights of C were not lost by the unauthorized act of the mortgagee and the conveyance of the mortgagor. Catherwood v Burrows, 342.

A holder of a note secured by a deed of trust, and having knowledge of it, is bound by the terms of the deed of trust. The note and deed of trust are to be read together as one instrument. Noell v. Graves, 353.

W made and delivered to G two promissory notes, the one in question payable three years after date, upon which was the following indorsement: "This note is secured by a deed of trust, stamped according to law." The deed of trust provided that the non-payment of interest on the notes should have the effect of making the notes due and payable. The notes were transferred by indorsement to N, who afterwards, on account of default in the payment of interest declared them due and payable, and sold the land thereunder. Subsequently, the note in question became due, and was then duly protested, in order to charge the indorser: *Held*, that as by the terms of the deed of trust, the note became due on default in payment of the interest, demand on the maker and notice to the indorser should have been made at that time, and this not having been done the indorser was discharged. Ibid.

A mere covenant by the purchaser of a mortgaged estate to indemnify his vendor, does not make it his personal debt, 367.

The words in a conveyance, "under and subject to a mortgage," do not import an assumption by the purchaser of the debt, unless there exist special circumstances to raise a covenant to that effect, 367.

Personal liability of a vendee of land "under and subject to" a mortgage, 406.

A mortgagee to whom a perpetual policy of insurance has been assigned as collateral is entitled to the return premium upon a foreclosure of the mortgage and sale of the mortgaged premises for an amount insufficient to satisfy the debt, 425.

Power of sale in mortgage may be exercised by administrator of mortgagee. 463.

The effect of a stipulation in a mortgage as to collection fees, 489.

May a mortgagor by tax title and quit claim defeat claim of mortgagee. Query, 488; answer, 508.

MORTGAGE SALES.

[See MORTGAGE.]

MUNICIPAL BONDS.

[See MUNICIPAL CORPORATIONS.]

MUNICIPAL CORPORATIONS.

[See also NEGLIGENCE.]

Distinction between powers of a municipal corporation, which are governmental or political in their nature, and those which are to be exercised for the management of property, 17.

Defense to suit brought by contractor, that fund provided by legislative authority has already been expended, 17.

Whether a municipal corporation possesses the power to borrow money, and issue negotiable securities therefor, depends upon a true construction of its charter and the legislation of the State applicable to it. Gause v. City of Clarksville, 358,

It has no incidental or inherent authority, under the usual grants of municipal power as a means of discharging its ordinary functions. Such authority may be inferred from special and extraordinary powers, which require the expenditure of unusual sums of money, when it is usual to execute such powers by means of borrowing, and when, upon the whole legislation applicable to the municipality, such appears to have been the legislative intent. Ibid.

These principles applied, and coupon bonds to borrow money to erect and repair wharves, and to open streets, issued under the general grants of municipal power in the charter: *Held*, not to be binding upon the city, while other bonds, issued under a special act of the legislature, in payment of stock in companies organized to construct macadamized roads from the city: *Held*, to be valid. Ibid

Where bonds of a city are issued without authority for money borrowed and actually received by the city, the remedy against the city is not by an action on the bond, but to recover the money. Ibid.

MUNICIPAL CORPORATIONS—Continued.

Authority of city council can not be delegated, nor can city abdicate control over public property held for city purposes, 466.

The owner of a lot abutting on an unimproved street of a city or village, in erecting buildings thereon, assumes the risk of all damage which may result from the subsequent grading and improvement of the street by the municipal authorities, if made within the reasonable exercise of their power. City of Akron v. Chamberlain Co., 225.

The liability of a municipality for injury to buildings on abutting lots exists only where such buildings were erected with reference to a grade actually established, either by ordinance or such improvement of the street as fairly indicated that the grade was permanently fixed, and the damage resulted from a change of such grade, or where the buildings, if erected before a grade was so established, were injured by the subsequent establishment of an unreasonable grade. Ibid.

Whether a grade be unreasonable or not must be determined by the circumstances existing at the time the grade was established, and not by the circumstances existing at the time abutting lots may have been improved. Ibid.

Within the principle of municipal liability, as above stated, is the case where a lot is improved in anticipation of, and with reference to a reasonable future grade which is afterwards established, and damage results from a subsequent change in the grade. Ibid.

Right of, to use the public funds for the purpose of opposing inimical legislation, 329.

Have no power to expend public money in festivities to visiting officials, 368.

Can not tax lands beyond corporate limits for corporate purposes, 426.

Municipal corporations, in the absence of statute, have no power to engage in commerce, or to make subscriptions or donations to railroads, 427.

When court cannot grant *mandamus* to compel payment of municipal bonds, 344.

Wrongful issue of municipal bonds by town officers, 422.

MURDER.

[See HOMICIDE.]

NAMES.

[See CRIMINAL LAW and PROCEDURE.]

NEGLIGENCE.

[See also EVIDENCE.]

Contributory Negligence.

In action against railroad for setting out fires, when contributory negligence of owner a defense, 79.

Bank officers entrusting messenger with combination of safe not, 96.

The law of contributory negligence as applicable to children, 141.

In allowing cow to run at large near railroad track, 137.

A bar to action except when negligence of defendant was willful, 238.

Rule that persons about to cross a railroad track must stop, look and listen, and that the failure to do so is negligence *per se*, not always applicable to persons leaving a train, 307.

At what age infant's responsibility for negligence commences, 307.

A person about to cross a street of a city in which there is an ordinance against fast driving, has a right to presume, in the absence of knowledge to the contrary, that others will respect and conform to such ordinance; and it is not negligence on his part to act on the presumption that he is not exposed to a danger which can only arise through a disregard of the ordinance by other persons. Baker v. Pendergrast, 334.

But where he knows that others are driving along the street, at the place of crossing, at a forbidden rate of speed, and he has full means of seeing the rate at which they are driving, the existence of such ordinance will not authorize a presumption which is negatived by the evidence of his senses. Ibid.

Contributory negligence in driving wagon illustrated, 367.

Plaintiff, a man in full possession of his faculties, was injured by a locomotive of defendant, whilst walking between the rails of defendant's track, in broad daylight, with nothing to obstruct the view along defendant's track for a quarter of a mile in the direction in which the locomotive was coming: *Held*, that this was negligence on plaintiff's part directly contributing to the injury and precluding a recovery. O'Donnell v. Missouri Pac. R. Co., 414.

Under the circumstances stated, the testimony of plaintiff that he looked carefully for the engine at the proper time and did not see it, is not evidence from which a jury can draw a reasonable inference of proper care on his part. Ibid.

NEGLIGENCE—Continued.

The doctrine of "comparative negligence" in Illinois, 427, 464.

One is not required to use "especial care" to guard against the willful neglect of others, 427.

When the life of a fellow creature is in extreme danger, the law does not realize that a person responding to his calls for help should have acted with entire self-possession, or that he should have taken the wisest and most prudent course, with a view to his own self-preservation, that could have been taken. Linnehan v. Sampson, 442.

In General.

Action against proprietor of mill for injuries caused by escaping from fire therein; duty of owner to provide means of extinguishing fire, and of escape, 1.

Damages recoverable from landlord who removes barrier against danger from excavation, for injuries to infant child of occupant of premises, 76.

Negligence in failing to record mortgage, 99.

Negligence in working coal mines, 98.

Negligence in drawing check, 137.

Defendants were owners of a public market, to which plaintiff brought cattle for sale, and paid toll for so doing. The defendants erected a spiked railing around a statue in the market, which the jury found was of insufficient height and dangerous to cattle. A cow of the plaintiff was killed in attempting to leap the railing. *Held*, that defendants were liable, 201.

Duty of tenants, occupiers and landlords of premises as to travelers, 221.

Liability for damages caused by storing water on premises; effect of act of third person, 289.

Statutory obligation of riparian owner to maintain river wall; common law liability; act of God, 385.

In an action to recover damages for injuries occasioned to the plaintiff, by a bull belonging to the defendant, and which, at the time of said injuries, was being led through the streets of a city by the defendant's servant, if the evidence shows that the injuries were caused by propensities usual and ordinary in such animals as that of the defendant, and also that in leading said animal, the defendant's servant was negligent, in view of such propensities, the plaintiff is entitled to recover, although no specific evidence of any exhibitions of viciousness or unruliness has been brought to knowledge of defendant. Linnehan v. Sampson, 442.

Liability for damage resulting from use of gunpowder, 484.

Instructions on question of negligence in driving team and causing collision, 486.

Liability of owner of leased premises for accident caused by want of railing on walk, 503.

Liability of printer of newspaper for carelessness in printing advertisement, 252.

Master and Servant.

Injury to employee through negligence of fellow servant. O. & M. R. R. v. Collarn, 12.

The plaintiff was employed to tend machine in dye-house, the gears of which were covered with boxing. A part of the boxing was broken away rendering the liability to be caught in the gearing very great. Plaintiff applied to the defendant's agent to have it repaired, which was refused, whereupon the plaintiff contrived a temporary protection of his own and continued in his work. *Held*, that he could not recover for any injury from this cause, 22.

Person not liable for negligence of contractor, 158.

Person voluntarily assisting servant of another cannot recover against master for injury received thereby, 287.

Common employment; stevedore; independent employment of stevedore, 306.

English legislation as to injuries sustained by fellow servants, 328.

Application of the rule as to employees to the case of a consignee of goods injured while receiving them, 425.

In action for personal injury to employee, proof of due case on part of employee essential, 427.

If the act of a servant be done in the execution of authority given him by his master, and for the purpose of performing what his master has directed, the master will be responsible, whether the wrong done by the servant be occasioned by negligence, or by a wanton or reckless purpose to accomplish the master's business in an unlawful manner. Linnehan v. Sampson, 442.

Municipal Corporations.

Not liable for damages caused by defective plan of drainage, 287.

Not required to render its roads passable for traveling for the entire width of their located limits. 287.

Not liable for damages sustained by traveler from the fright of a horse at meeting cows in the road with boards on their horns, and also from a defect in the way, the combined action of both causes operating to produce the accident, 287.

NEGLIGENCE—Continued.

Not liable for damages where act was done under legislative authority, 289.

Liability of, for damages caused by defective sewers, 355, 366.

Liability of city for the negligence of its fire department, 409, 469.

Notice to city of defect in sidewalk need not be actual when it is long continued, 426.

Charter exemptions from consequences of negligent acts of servants of, invalid, 486.

Liability of city for defect in premises adjoining highway, 503.

Proximate and Remote Cause.

Where defendant agreed to carry a number of horses to a certain point and failed to provide the necessary cars, in consequence of which the owner was forced to take them by the road whereby they were lamed and sold for less than they would otherwise have realized; but for some time previous the horses had been fed on soft food, and had they been in hard hunting condition they would not have been the worse of the journey. *Held*, that the injury to the horses was attributable to the defendants, and not to the condition in which the horses were; and that damages were not too remote. Waller v. M. G. R. Co., 29.

Railroad Companies; see also *Master and Servant.*

A locomotive fireman is not as a matter of law incompetent to manage and run a locomotive engine, 12.

The law presumes that a trespasser on a railroad track, when he discovers a train approaching, will, from a care of his personal safety, if not from a sense of duty, leave the track before an approaching train reaches him, and the managers of the train may act upon this presumption. Indianapolis, etc. R. Co. v. McClaren, 244.

Section 1289 of the Iowa code providing that railroad companies shall be liable for all damages by fires set out or caused by operating their roads, does not create an absolute liability regardless of the question of negligence, but makes the fact of causing the fire presumptive proof of negligence, and casts upon the company the burden of showing proper care. Small v. Chicago, etc. R. Co., 276.

Street railway: what sufficient evidence of negligence to be submitted to jury, 306.

Duties of railroad companies as to carrying and landing passengers, 306.

The regulations of a railroad company that freight and passengers shall be carried on separate trains is a reasonable one; and a person who, in violation of such rules, intrudes himself upon a freight train and sustains injury, can not recover therefor, 347.

A railroad is not liable for an injury to a trespasser, 385.

A railroad company using a track belonging to another person is liable for injuries to its employees resulting from the unfitness of the track for such use, 404.

Requisites of an indictment for negligently running train, 405.

Right of railroad companies to eject passengers from cars because of non-observance of their regulations, 409.

While an employee of a railroad company may require the cars constructed by such company to be equipped with all practical appliances to insure the safety of those handling them, he is not entitled to demand the same degree of perfection in the cars of other companies which may be transported over the road in the ordinary course of its business, and the company is not liable for an injury which occurs by reason of the fact that the cars of other companies so transported are constructed differently from its own. If they are such as are in ordinary use upon other roads, it is the duty of the company to receive and transport them, and it can not be charged with negligence for so doing. Baldwin v. Chicago, etc. R. Co., 497.

Weight of testimony of witnesses as to sounding of whistle at railroad crossing, 506.

NEGOTIABLE AND ASSIGNABLE PAPER.

[See also MORTGAGES.]

Promise by a supposed maker to pay a forged note not binding, when, 58.

Assignee of a note taken in part payment for land must use due diligence to collect it, in order to preserve his lien retained in his deed, as against the vendee who made the payment by the transfer or assignment of the note, 58.

When assignor of two notes, secured by a lien on land, has been released from liability on his assignment of one of the notes, by the laches of the assignee, the proceeds of the land in lien should be applied equally to the two notes, 58.

NEGOTIABLE AND ASSIGNABLE PAPER—Continued.

Agreement to pay attorney's fee if note is "collected by suit" void, 75.

A note given to a railroad company to induce it to change the location of its road is not void as against public policy. First National Bank v. Hendrie, 165.

What is a "reasonable attorney's fee" in a note, 237.

What constitutes and what are the liabilities of a guarantor of a note, 266.

Promissory note "payable after death," 284.

To an action by drawer against acceptor to recover the amount of the bill of exchange, the defendant pleaded that the consideration of the bill was tainted with illegality, inasmuch as a portion of that consideration was an agreement by the drawer not to institute criminal proceedings for an alleged forgery against B S, a relative of the acceptor. *Held*, that the defense could not be sustained, because the agreement not being one to stifle criminal proceedings already commenced, but to forbear from instituting criminal proceedings, that portion of the consideration for the bill was nugatory but not illegal. Rourke v. Mealy, 319.

Although there is a public interest that a prosecution already instituted, even without a probable cause, should be brought to a conclusion in due course of law, there is no such interest in a prosecution being commenced. Ibid.

The giving of evidence by the plaintiff in a prosecution for forgery, instituted by other parties, would not be a breach of the defendant's agreement not to prosecute. Ibid.

Where place of payment in bond is in blank it is not a negotiable instrument, 402.

Note delivered to agent to obtain signatures, and instruction not carried out; *bona fide* holder entitled to recover, 462.

Promissory note given by stakeholder for stakes in his hands invalid except in hands of *bona fide* purchaser without notice, 465.

Bank not responsible for notes stolen after cashier had issued them and signature of president forged, 471.

Removal of condition in promissory note a good defense to suit by holder unless maker negligent, 486.

Where there are two indorsements in succession they are several, except in case of partnership, 485.

Where indorser promises to pay note if allowed to run, omission of protest and notice will not discharge him, 485.

What are the rights of holders of coupon bonds of railroads. Query, 240; answer, 308.

Does a statute providing that bills of exchange, drafts, etc., payable on Sunday, shall be payable on preceding day, apply to a post-dated check. Query, 367; answer, 488.

NEWSPAPER.

Liability of printer of newspaper for carelessness in printing advertisement, 25.

NEW TRIAL.

[See APPEALS AND APPELLATE PROCEDURE; PLEADING AND PRACTICE.]

NOTICE.

[See REGISTRATION.]

P was a member of a firm, and also a director of a bank He obtained at the bank the discount of a note belonging to the firm, which had been got of the banker by fraud. He had notice, as a member of the firm, of the fraud before the note was offered for discount, but did not communicate his knowledge to any of the officers of the bank. *Held*, that the knowledge of P was not constructive notice to the bank, 181.

Of prior conveyance can not be inferred from fact that subsequent purchaser was a subscribing witness to the prior deed, 269.

Notice for Saturday, September 19, good for the Saturday meant, although the 19th is Sunday, 487.

Notice of eight days sufficient where no time specified by statute, 487.

NUISANCE.

A livery stable in the residence portion of a city is not, as a matter of law, necessarily to be considered as a nuisance to the improved property adjoining or near it. Flint v. Russell, 67.

Where the facts stated in the bill showing that the erection and use of a livery stable would be a nuisance to the adjoining property were denied by the answer, a preliminary injunction to restrain the erection of a building, to be used as a livery stable, was refused. Ibid.

Owner of ground with whose consent adjacent proprietor occupies a portion of his premises on which to build a joint wall, can not tear away such wall after a building has been erected thereon, upon the faith of his acquiescence in its location and construction, 98.

NUISANCE—Continued.

Injunction denied against threatened encroachment on alley, 197.

When tenant is responsible for nuisance caused by leased property 366.

When nuisance will be abated by destruction of property, 506.

OBSCENE PUBLICATIONS.

Indictment for publishing figures and pictures of "naked girls" not sustained by proof that defendant took photographic pictures of two girls naked to the waist, 19.

In indictment for, offensive publication need not be exhibited in the record, 203; *contra*, 235.

OBSTRUCTING HIGHWAYS.

[See HIGHWAYS.]

OFFICES AND OFFICERS.

[See also JUSTICE OF THE PEACE.]

Liability of judicial officers for judicial acts, 25.

Civil liability of confederate military officers for official acts, 55.

Tax collector protected by his warrant in taking and selling property, notwithstanding illegality of the assessment, 97.

Certificate of clerk by deputy as effectual as if by clerk himself, 118.

Public agent, employing one on public works, not personally liable for his wages, 204.

Failure of officer to take oath does not exempt him from liability for official misconduct, 265.

Sheriff can not be amerced for failing to sell homestead on execution obtained on an old debt, 346.

Litigation for an office closes with the office. If the term expires pending the litigation, no judgment can be rendered, 347.

A circuit court of the United States has jurisdiction of a suit brought against an officer of a State who is so using his official position as to invade the rights secured to the complainant by the Constitution and laws of the United States. Hancock v. Walsh, 393.

When a new county is formed a "vacancy" in its offices happens within the meaning of that word in the Constitution (Pa.), 425.

A sheriff, and at the same time *ex officio* tax collector is not personally liable for the payment of printer's bills for publishing delinquent tax list, 427.

A member of Congress is liable to service of civil process during his attendance on the session of Congress, and in going to and returning, the exemption which his position gives him being only from *arrest* in private actions, 429.

The right to reopen and correct accounts of public officers, 449.

Abstract of settlement of county officers with collectors filed with the clerk of circuit court must be under seal of office, 484.

What constitutes a public office; distinction between officer and employee, 507.

Action against sheriff for failure to execute process, 506.

OFFICIAL BONDS.

[See SURETYSHIP AND GUARANTY.]

OPINION EVIDENCE.

[See EVIDENCE.]

OPTION CONTRACTS.

[See CONTRACTS.]

OUSTER.

[SEE CORPORATIONS.]

PARENT AND CHILD.

[See INFANCY.]

PARTIES.

[See PLEADING AND PRACTICE.]

PARTITION.

A partition will not be defeated merely because other persons may afterwards come in and be entitled to shares who are not now before the court. Reinders v. Koppelmann, 245.

Can partition be decreed of personal property. Query, 307; answer, 408.

PARTNERSHIP.

Final settlement of estate where one co-partner dies must be made under administration law in courts of probate, 18.

Circuit courts no jurisdiction in such cases until after final settlement has been made, 18.

PARTNERSHIP—Continued.

Joint and several liability of partners for partnership debts. Kendall v. Hamilton, 47.

The defendant was jointly interested in a contract made by the plaintiffs with the firm of W M & Co. The plaintiffs recovered judgment for breaches of that contract against members of the firm of W M & Co. other than defendant. W M & Co. subsequently became bankrupt, and the plaintiffs proved against their estate; but, afterwards, discovering that the defendant was jointly interested in the contract with W M & Co., brought an action on that contract against the defendant. *Held*, that the action was not maintainable, as the cause of action against the defendant was merged in the judgments recovered against the other members of the firm of W M & Co. Ibid.

When one partner entitled to compensation for personal services rendered the firm, 77.

A and B being partners, A dies. The latter is individually insolvent. The firm, however, is solvent. The administrator of A's estate cites B to file an account as surviving partner in the probate court. B does so, and reports the payment of certain notes after A's death, given by A during the lifetime for his individual indebtedness, and for the payment of which B was surety, and he claims the right to set-off these payments and to retain a sufficient sum belonging to the estate to pay the balance. *Held*, that B has no right to set-off all he has paid, or may be compelled to pay, but that the estate of A being insolvent he can be placed upon an equality with the other creditors by setting of the same *pro rata* share of his claim that he would have received had it been proved and allowed in the probate court. Mack v. Woodruff, 129.

Right to use firm name passes with assignment of "good will and business," 161.

Rights of partners after dissolution of firm, 200.

Notes of firm fraudulently issued by one partner; liability of firm; *bona fide* holder, 324.

Rights of creditors in property; right to application of property to pay firm debt, 344.

Where one has induced another by false representations to enter into partnership with him, equity will relieve, 344.

Owners of trotting horse held not partners but tenants in common, 405.

PATENT LAW.

Effect of the extension of a patent on a previous assignment of the patent, 122.

Right of State to regulate sale of patented articles, 161.

Patent Rights and State Rights. Articles by Wm. Ritchie, Esq., 242, 270.

Measure of damages in action for infringement of patent, 269.

A suit between citizens of the same State can not be sustained in a circuit court of the United States as arising under the patent laws, where there is no denial of the validity of the plaintiff's patent, where its use is admitted, and where a subsisting contract is shown governing the rights of the parties in the use of the invention, 384.

Relief in such an action is founded on the contract and not on the patent laws of the United States. Ibid.

Jurisdiction of Federal courts in patent cases, 445.

Limitation of patent suits, 445.

Bill for profits after expiration of patent, 445.

Statutes of Limitation as Applicable to Patent Rights. Leading article, 491.

PAYMENT.

Rule as to application of payments, 266.

P, for a consideration moving from K to him, assumed in a deed the payment of a debt due from K to B: *Held*, that the agreement enures to the benefit of B, and in a court of equity P is liable to him directly. The bringing of suit is a sufficient acceptance by B. Bissell v. Bugbee, 272.

Recovery of money voluntarily paid, 237, 305, 309.

PETITION.

[See PLEADING and PRACTICE.]

PLEADING AND PRACTICE.

[See also APPEALS AND APPELLATE PROCEDURE; CRIMINAL LAW and PROCEDURE.]

Affidavit.

Requisites of affidavit to set aside default, 483.

Affidavit to obtain *capias ad satisfaciendum;* failure to affix official seal, 484.

Amendments.

Right to amend writ of attachment, 39.

Names of plaintiffs may be changed after suit brought, 266.

PLEADING AND PRACTICE—Continued.

The power of a court either trial or appellate to amend a judgment by striking out the name of a party, 340.

Misnomer in writ may be amended, 405.

Affidavit may be amended by attaching notary's seal, 484.

Conduct of Trial; see also *Jury*.

That the judge who presided at the trial of a case was an honorary member of the Bar Association, the prosecutors, did not disqualify him, he not being liable for assessments for expenses of the association. *Re* Bowman, 250.

Right of counsel to reasonable time in which to make argument. White v. People, 273.

Reading medical works to jury, 326.

Continuance.

Affidavit for, may be attacked in same manner as deposition by impeaching the veracity of the witness, 78.

Costs.

Costs of proceedings to establish the validity of a will as against one previously executed, are awarded against the estate, and not against the proponent, when the latter has been designated by the court to represent the parties interested. Conely v. McDonald, 229.

Declaration—Petition.

Allegation that president of bank authorized to make assignment of property, admitted unless denied under oath, 78.

Performance or excuse for non-performance of condition precedent must be pleaded, 216.

Account annexed to petition can be made more definite and certain on motion, 284.

Petition which fails to state facts sufficient to constitute cause of action, fatally defective; advantage may be taken of defect after judgment by default, or in Supreme Court, 485.

Defense—Answer.

Petition alleged the making of certain assignments; answer, besides general denial, averred that they were without consideration and good faith: *Held*, that the fact of the assignment was admitted, 78.

Right to set-off damages by plea to action in contract, 326.

Effect of plea of *nul tiel* corporation. 326.

Depositions.

The value and weight of depositions as evidence, 386.

Depositions taken between same parties or privies admissible in evidence in other actions w thout being filed or notice given of such intention, 484.

Equity.

Chancery procedure; decree based on commissioner's report; exceptions; appeal, 218.

When equity not authorized to retain fund paid into court, to allow validity of assignment thereof to be litigated, 387.

Joinder of Actions.

Cause of action against one for the wrongful taking of personal property can not be joined with an action against the party who has received, and who at the time of bringing the action has possession of the property, 346.

Several school districts can not join in action to recover money paid by all, 404

A cause of action for slander may be joined with an action for divorce, 404.

Jury; see also *Conduct of Trial.*

Failure of any grand juror to possess necessary qualifications renders indictments found by grand jury, voidable, 118.

Grand juror competent witness to prove his qualification, on motion to set aside indictment 118.

One unable to read English not eligible for juror, 180.

Verdict arrived at by lot; affidavit of jurors, 233.

Error for juror to examine map not put in evidence, 237.

When the examination of a juror on the *voir dire* does not show that he was under the influence of impressions that would close his mind to evidence, the fact that he had formed an opinion does not render him incompetent. *Re* Bowman, 250.

A verdict will not set aside because an affidavit is filed as to the expressions of prejudice against the defendant on the part of the juror, uttered before the trial, when the juror, under oath, denies the allegations. Ibid.

The trial judge may properly refuse to consider a paper signed by a portion of the jurors, requesting the court to pass a light sentence. Ibid.

No suitor entitled to colored jurors as of right, 346.

Privilege of juror to refuse to answer questions criminating himself, 402.

PLEADING AND PRACTICE—Continued.

Miscellaneous Rulings.

Character of pleading determined by averments it contains, and not by name given it, 17.

Case tried by court without jury; court not bound to find specially or state conclusions of law and fact separately unless requested, 78.

Tender and payment into court; right to custody of moneys in court. 79.

Variance between allegations and proof; if party misled this fact can only be established by affidavit, 284.

Five days' rule adopted in Cook county, Ill., is inconsistent with general practice act, and void, 345.

How far "rules of court" are binding upon litigants, 424.

Service of original notice, and not its delivery to officer for service, is the commencement of the action, 446.

Suggestion of bankruptcy filed on day of entry of judgment, 462.

Variance between copy of instrument in suit, and attempted description thereof in complaint, copy controls, 486.

Misnomer.

In complaint, no ground for reversal, 215.

New Trial.

Requisites of petitition for, under Iowa code, 98.

Parties,

Surety in recognizance may be sued without joining principal, 233.

In proceedings to quiet title, 324.

K filed a bill against D claiming 184 shares of stock in company, and charging that while in possession of the books and control of the office of the company, he caused a transfer to be made on the books of the company to him of the shares of its stock owned by plaintiff, and the relief asked was the restoration of the stock on the books of the company to the name of the plaintiff, and the future recognition by the company of his rights in the stock. The bill prayed that D should be compelled to do this. *Held*, that in the absence of the company as party to the proceedings, no such relief could be decreed, 384.

In action for divorce, third party may be joined, 404.

Process.

Foreign insurance companies not having chief offices here can not be served with process upon local agents, 304,

Service of process on corporation; falsity of sheriff's return must be met promptly by plea in abatement, 305.

Foreign corporation can not be served by serving agent who is temporarily in county, 345.

A statute prescribed the form of an affidavit to be indorsed on all writs of attachment. This statute being in force, an officer first made the required affidavit as the plaintiff's agent, and then, as officer, served the writ by garnishment: *Held*, that his act, although improper, was not illegal, and that the attachment was valid, 465.

Recognizance.

Not essential to validity of recognizance that it should contain every condition provided by statute, 176.

Referee.

In trial before referee, latter acts as court, and exceptions to his action or rulings should be taken in same manner as if trial were before court, 17.

Report of, must be in writing, 426.

Set-off and Counterclaim.

Action on judgment; set-off of breach of bond given by assignee of judgment, 19.

Where facts alleged in answer constitute a counterclaim they should be treated as such, whether they are so named by the pleader nor not, 78.

Simple allegation of payment as a defense in answer can not be regarded as a counterclaim, although affirmative relief is asked for, 78.

To entitle a defendant to affirmative relief, answer must contain all requisites of petition upon similar cause of action, 78.

The general rule in equity, as at law, is that joint debts can not be set-off against separate debts, unless there is some special equity justifying it, 136.

If there are such equities, the bankruptcy of the party against whom they exist, is sufficient ground for the allowance of the set off against notes not due at the time of assignment. Ibid.

Defendant in tort can not plead a counterclaim *ex contractu*, not arising upon same transaction declared on in complaint, 178.

Statement in Mack v. Woodruff, 8 Cent. L. J. 130: "It has been held that in a suit brought by an administrator against a debtor to the estate, the latter can not set-off a claim for money the debtor has paid as surety for the deceased after his death," corrected, 179.

PLEADING AND PRACTICE—Continued.

Execution of a *cognovit* is a waiver of the right to a set-off for causes then known to be existing, 186.

Defendant may proceed to trial of counterclaim notwithstanding action has been dismissed, 233.

United States Courts.

No discretion in circuit court to stay proceedings in suit on judgment from another State to await writ of error which does not operate as a *supersedeas*, 41.

The Federal courts, in awarding writs of *mandamus* as auxiliary to their general jurisdiction previously acquired, will conform to the State practice in similar cases. Wisdom v. City of Memphis, 109.

Granting or refusing new trial in Federal court not reviewable, 175.

Process of a Federal court may be served upon a foreign corporation doing business in the State. By doing business in the State it is "found" there, within the meaning of that word in the Federal statutes. Wilson Packing Co. v. Hunter, 333.

The right under section 831 of the Revised Statutes, to require a panel of jurors called to serve for a term to take an oath therein prescribed, or be discharged from the panel, is one which can only be exercised by the district attorney; it does not belong to either of the suitors, 445.

The lien of judgments of Federal courts, 469.

Venue.

Change of venue from county to circuit court (Ill.), 292.

Verdict.

Effect of ambiguous verdict, 365.

Affidavits of jurors not admissible to show that mode of computation adopted by the jury in arriving at their verdict was contrary to law and evidence, 489.

POLICE POWER.

[See CONSTITUTIONAL LAW.]

POLYGAMY.

United State statute punishing polygamy in the Territories, constitutional, 75.

PRACTICE.

[See PLEADING AND PRACTICE.]

PRESUMPTION.

[See EVIDENCE.]

PRINCIPAL AND AGENT.

[See AGENCY.]

PRINTER.

[See NEWSPAPER.]

PRIVATE INTERNATIONAL LAW,

[See CONFLICT OF LAWS.]

PROCESS.

[See PLEADING AND PRACTICE.]

PROMISE.

[See CONTRACTS.]

PUBLIC POLICY.

[See CONTRACTS; NEGOTIABLE AND ASSIGNABLE PAPER.]

PUBLIC ROADS,

[See HIGHWAYS.]

PUNCTUATION,

The effect of a semicolon, 309.

PURPRESTURE.

A common law offence punishable by indictment, 59.

Cannot be punished under indictment for obstructing a street, 59.

QUO WARRANTO.

Will not lie against the officers of a city to obtain judgment declaring certain territory not lawfully within the limits of the city, 237.

RAILROADS.

[See also COMMON CARRIERS; DAMAGES; NEGLIGENCE; TAXATION,]

The owner of land adjoining a railway on both sides has a right to light and air across the railway, 405.

Although a railroad company acquires the fee simple in land taken by it, the rights of neighboring land owners are only so far curtailed as is necessary for the purpose of the railway, 403.

In all the townships of this State (Kansas) where the statutes are in force, preventing swine from running at large: *Held*, that railroad companies are not required to fence against hogs. Atchison, etc. R. Co. v. Yates, 459.

RAILWAY MORTGAGE.

[See MORTGAGE; RECEIVERS.]

RECEIVERS.

The C D & V Railroad executed two mortgages to F and another, as trustees, to secure an issue of bonds. The mortgages covered all the franchises, issues and profits of the company, and all the property it then owned or possessed, or might thereafter acquire, either in law or equity. Afterwards, the company entered into an agreement with one S to purchase from him certain cars to be used on the road, said cars to be delivered in installments, and to be paid for in notes of the company, the cars to remain the property of S until paid for, and a large number were delivered to the company under this contract. The mortgages being subsequently foreclosed and receivers appointed, the cars were claimed by the mortgagees and intervening bondholders. The cars being necessary for the use of the road were used by it during the possession of the receivers. The court below held that S had not parted with the title to the cars, and was entitled to their possession, and also ordered that a certain sum should be paid him by the receivers and prior thereto. *Held*, 1. That the title of the mortgagees was subject to the rights of S under his contract. 2. That the order for the payment out of the funds in court of the rental of the cars during the said term was improper. Fosdick v. Schall, 299 and see 303.

Order of circuit court denying mortgagee's motion for appointment of receiver pending foreclosure, interlocutory, and not appealable, although mortgage contains clause giving mortgagee, in case of default, right to take possession and operate the works, 323.

A court of chancery may, in a suit to foreclose a mortgage, appoint a receiver to collect the rents and profits arising from the property mortgaged, even when the mortgage does not, by express terms, give a lien upon the income derived from such property, and although there may have been a decree and sale of property under the mortgage. Haas v. Chicago Building Society, 456.

But this can only be done where it is made to appear that the mortgaged premises are insufficient security for the debt, and the person liable personally therefor is insolvent, and where there are circumstances of fraud or bad faith on the part of the mortgagor, which would render a denial of the relief sought inequitable. Ibid.

Whether these first two conditions would be sufficient, without circumstances of fraud or bad faith—*quære?*

A city can not refuse to supply water to receiver of insolvent railway company, necessary to run its engines, on the ground that water rents due when company was declared insolvent remain unpaid, 508,

A receiver appointed in a foreign jurisdiction, clothed with authority to take the designated property wherever situate, may sustain a suit for such property in the courts of this State. This is the rule whenever the creditors of the person represented by the receiver do not intervene. Hurd v. City of Elizabeth, 493.

RECOGNIZANCE.

[See PLEADING AND PRACTICE].

RECORDS.

[See EVIDENCE; JUDGMENTS AND DECREES.]

REFEREE.

[See PLEADING AND PRACTICE.]

REFERENCE.

[See ARBITRATION AND REWARD; PLEADING AND PRACTICE.]

REFORMATION.

Of mortgage; *bona fide* purchaser from judgment creditor can not be affected by, 39.

Of a deed of a married woman, 42.

Jurisdiction of equity to reform written instruments, 155,

Of will; mistake, 178.

A sheriff's deed can not be reformed, 424.

REGISTRATION.

Where a mortgage for $5,000 was correctly entered in the "entry book" of the recorder's office, but was by the mistake of the recorder, and without any fault of the mortgagee, recorded in the mortgage record, as being for only $500: *Held*, that the mortgage did not take priority over a subsequent *bona fide* mortgage for a valuable consideration, and without other notice than was disclosed by such record, except as to the amount for which it was actually recorded. Nor was the actual knowledge that the mortgage was indexed as one for $5,000 sufficient to put the subsequent mortgagee on inquiry and charge him with notice of the mistake in the record. Gilchrist v. Gough, 166.

A novel system of recording deeds, 428.

Liability of recorder of deeds for omitting mortgage in certificate, 464.

RE-HEARING.

[See APPEALS AND APPELLATE PROCEDURE.]

RELEVANCY.

[See EVIDENCE.]

REMOVAL OF CAUSES.

One C was the trustee of certain property in Alabama left by will to testator's daughter. On the death of the latter, the trustee filed a bill in the State court against parties claiming the property, viz.: the brothers and sisters of the deceased, her administrator in Alabama, and her husband, for the settlement of his trust and for instructions as to the disposition of the property. All the parties, except the husband who resided in New York, were residents of Alabama. The husband filed a petition for the transfer of the cause to the Federal court, *Held*, that he was not entitled to have the cause removed under any of the acts as to the removal of causes. *Ex parte* Grimball, 151,

On the presentation of a petition for removal, it is the duty of the State court to examine it, and if necessary look into the case to which it relates, in order to ascertain whether it and the petitioner's relation to it are such as to entitle him to remove it. Ibid.

Court will overrule motion for removal where proper proceedings have not been taken, 137.

If petitioning party do not file copy of record, other party may do so, 201.

After judgment in a case in the State court has been reversed on appeal and a new trial ordered, the right to a new trial must be perfected absolutely before a party is entitled to remove it into the Federal court, under the statute of March 3, 1875, 323.

A motion, under the Missouri statute as to corporations, for execution against a stockholder, can not be removed to the Federal court. It is not a "suit at law or in equity," within the meaning of these words, as used in the statutes giving the right of removal of causes from State to Federal courts. Webber v. Humphreys. 417.

Amount in controversy how determined, 445.

If parties substituted on the record by involuntary process are entitled to remove the case, they may do so, though the original parties in the suit were not so entitled, 445.

Notice need not be given to plaintiff's attorney, of proceedings for removal in a State court, 508.

When is a cause removed from a State court actually within the jurisdiction of the Federal Court? Query, 408; answer, 447.

REPLEVIN,

Against officer having possession of intoxicating liquors wrongly seized, 38.

Form of judgment for defendant where goods seized have been disposed of before judgment, 177.

Limiting liability of replevin bail, 265.

Purchaser at foreclosure sale can not before sale is confirmed maintain replevin for crops growing on the land at the time of sale, 325.

May be maintained without notice where goods are sold on condition, 385.

RES ADJUDICATA.

[See JUDGMENTS and DECREES.]

RESCISSION.

[See SALES.]

REVENUE LAWS.

Meaning of "reasonable cause," in U. S. revenue laws, 174.

REVOCATION.

Of contract for "good cause"; construction of term, 324.

REWARD.

[See FINDER.]

RIPARIAN RIGHTS.

[See WATERS AND WATERCOURSES.]

ROADS.

[See HIGHWAYS.]

SALES.

[See also AGENCY; FALSE AND FRAUDULENT REPRESENTATIONS; WARRANTY.]

Effect of sale "with all faults." Ward v. Hobbs, 5.

When right of purchaser to rescind must be exercised, 39.

Vendor may protect himself by rescission against fraud of insolvent vendee, 218.

Personal property belonging to wife sold by husband; title, 326.

Evidence of fraud necessary to enable vendor to annul sale, 429.

SALVAGE.

[See ADMIRALTY AND MARITIME LAW.]

SCHOOLS AND SCHOOL LAW.

School directors have power to borrow money and give their written assurances therefor, 177.

A school teacher is hired for the school year at a stated salary, but during the term the board closes the school for two months on account of an epidemic in the neighborhood. Can the teacher recover his wages for this period? Query, 59; answer, 180.

SEDUCTION.

Action can be maintained though seduction accomplished with fraud and violence, 305.

SENTENCE.

[See CRIMINAL LAW and PROCEDURE.]

SET OFF.

[See PLEADING AND PRACTICE.]

SHERIFF.

[See OFFICES AND OFFICERS.]

SLANDER AND LIBEL.

Publisher of libel subject to action though libel signed with name of another, 23.

Power of equity to enjoin a threatened libel, 61.

Imputation of tale-bearing libelous, 134.

Where plaintiff a clergyman no proof of special damage required, 204.

Libel of public officers, 234.

Person not liable for repetition of slander by other persons, 284.

Notice of justification, 306.

Meaning of current phrases judicially recognised, 306.

Evidence as to character of plaintiff, in actions for, 329.

Criminal information against proprietor of newspaper; what is authority of editor to publish libel; protection of proprietor under statute, 403.

Charge of adultery not actionable *per se*, 464.

Sickness of person slandered resulting from the slanderous charge not sufficient to prove special damage, 464.

To say of a candidate for Congress that he is of weak mind and could not be depended on, not actionable, 471.

To impute the commission of a crime to a man actionable *per se* although he may not be liable to punishment for it, 471.

SLAVERY.

[See JUDGMENTS and DECREES.]

SPECIFIC PERFORMANCE.

[See also HUSBAND AND WIFE.]

When there is a change of circumstances which can not be compensated for in damages, resulting from the failure or refusal of one party to perform his part of the contract, that party is not entitled to a specific execution, but the injured party is entitled to a rescision, 155.

Specific performance refused of contract to build and equip railroad, although the contract price was to be paid in stock and bonds of company, and estimates, etc., were to be made by company, 508.

STATE.

Does not possess common law prerogative of crown to have debts paid in preference to other creditors, 62.

STATUTE OF FRAUDS.

Defendant agreed to pay a minister for his services two dollars a year, and had for several years paid the sum half-yearly. Subsequently he refused to pay any longer. *Held*, not within the statute, 23.

A, living in Milwaukee, Wis., went to Connover, Ia., and there took an order for goods from B, but no memorandum in writing was signed, and no part of the purchase price was paid at the time the contract was made. The goods were shipped by rail from Milwaukee to B at Connover. *Held*, that the contract must be governed by the law of Iowa, and being void by the statute of frauds of that State, the delivery of the goods to the railroad company by A did not constitute an acceptance of them by B so as to take the case out of the statute. Kiewert v. Meyer, 65.

Memorandum under, may be signed in lead pencil, 203.

The memorandum in writing necessary to make a contract, within the meaning of the statute of frauds, though signed by the defendant and describing with sufficient distinctness the property sold, and the consideration to be paid, is not sufficient to sustain an action, unless the other party to the agreement is either named in the memorandum or so designated in some paper signed by the defendant that he could be identified without parol proof. Grafton v. Cummins, 381.

STATUTE OF FRAUDS—Continued.

A parol contract for the sale and abandonment of buildings erected by permission for special purposes upon the land of another, not within the statute, 425.

Contracts not to be performed within a year, 482.

STATUTE OF LIMITATIONS.

[See LIMITATION.]

STATUTES.

[See also INTERPRETATION.]

A statute can not make an act done in connection with a private contract an actionable wrong if it was not actionable independently of the statute. Ward v. Hobbs, 5.

Enactment by Congress of the Revised Statutes did not make anything law which was not law on December 1, 1873, 142.

At what time criminal statutes take effect, 134.

Penal statutes are to be construed strictly. If there is a fair doubt whether the act charged in the indictment is embraced in the criminal prohibition, that doubt is to be resolved in favor of the accused. United States v. Reese, 453.

A question as to the effect of repugnant statutes. Query, 388; answer, 488.

STOCKHOLDERS.

[See CORPORATIONS.]

STOCK LAW.

[See RAILROADS.]

STREETS.

[See HIGHWAYS.]

SUICIDE.

To advise another to commit suicide amounts to murder if advice is followed, 203.

Does not raise presumption of insanity, 222.

SUNDAY.

[See CONTRACTS.]

SURETIES.

[See SURETYSHIP AND GUARANTY.]

SURETYSHIP AND GUARANTY.

[See also GUARDIAN AND WARD; LIMITATIONS.]

Surety in replevin bond not substituted to liens of creditors, 18.

Guarantor of collection of note can not be sued until legal proceedings diligently pursued have failed to result in collection. The condition precedent is not answered by evidence of maker's insolvency. Bosman v. Akley, 28.

Sureties on bond of bank messenger liable for theft of principal while acting outside the scope of his employment, 96.

Guaranty to have bricks made "in the best manner and at the lowest cost possible;" construction, 97.

Knowledge of principal of agents bad character not communicated to surety is a fraud on him, and discharges him from liability, 156.

Statement in Brandt on Suretyship and Guaranty that "a suit against the sureties on a guardian's bond is sustainable without a previous liquidation of the amount due by the guardian" criticised, 138, 180.

Debtor and creditor; securities given to surety; right of creditor. *Re* Baldwin, 186.

When fact of suretyship does not appear on face of note, to maintain defense of suretyship defendant must prove notice to plaintiff, 200.

The arrest and detention in another country of a prisoner who is under bond for appearance does not release his sureties, 407.

An attorney who tenders himself as a surety on a bond, and is accepted by the proper officer, can not afterwards plead his disability to relieve himself from his obligation, even though it is provided by statute that "no attorney shall be received as security in any proceeding in court," 407.

Sureties of a city treasurer signed a printed form of a bond with blanks for inserting in the body the names of the sureties, amount of the penalty, the office to which the principals have been elected, etc. These blanks were afterwards filled up by the city officers, without the knowledge or consent of the sureties. *Held*, that the sureties were not bound, 427.

A statute requiring a city treasurer to take the oath of office and file his bond within fifteen days after his election, is mandatory, and a failure to file such bond within the required time is a vacation of such office, and relieves the sureties from liability on the bond, 427.

SURETYSHIP AND GUARANTY—Continued.

The sureties on the bond of a city treasurer for his second term are estopped from denying the truth of his official report as to the amount of money in his hands at the end of his first term, 427.

The estate of a deceased surety on a guardian's bond is liable for default which occurs subsequent to the surety's death, 486.

Laches of officers or agents of government to assert claim, do not discharge sureties on official bonds, 155.

That duties and responsibilities of principal have been enlarged during his term does not render void the bond as a security for what it was originally given to secure, 155.

Sureties on official bond of coroner liable for his negligence while acting as sheriff, 198.

Bond in alternative; construction of "or," 185.

A bond stipulating for the good conduct of an officer for a fixed term and until another is appointed, will not remain in force after the reappointment of the original officer, 221.

Bond will not be construed so as to render surety liable for acts committed prior to its execution, unless such intent is clear from its terms, 345.

A bond can not be avoided at the instance of a surety upon the ground that he signed it under a conditional agreement with the principal made at the time of signing it which the latter had failed to carry out, unless the obligee had notice of the agreement at or before his acceptance of the obligation, or had knowledge of such facts and circumstances as to the rights of the surety as would place a prudent man on inquiry. Hall v. Smith, 398.

The defendant signed his name as surety on a bond, in the body of which the names of J H and W L H were inserted as sureties, on the condition that they should become jointly bound with him as sureties. The bond was then delivered by him to his principal for the purpose of obtaining their signatures, but the principal instead of doing so induced G W and W W H to sign the bond, and in that condition it was delivered to and accepted by the obligee. *Held*, that the defendant was not liable. Ibid.

Sureties on collectors bond liable for past due taxes paid to principal, 422.

TAXATION.

Power of legislature or municipality to require payment of license tax as a condition precedent to the exercise by an attorney of the right to practice granted by the court, 2.

Ordinance of the city of St. Louis, under its scheme and charter, imposing a license tax on all lawyers, practicing within the limits thereof, a valid exercise of the taxing power delegated to said city, and not in conflict with the Constitution of this State. Steinberg v. City of St. Louis, 8.

The fact that it demands of every lawyer the same amount of tax without reference to income, emoluments or profit of his practice as such, does not render such tax unequal; nor does the fact that the general assembly has so far failed to pass any law imposing a license tax on lawyers throughout the State, make it obnoxious to that section of the Constitution requiring taxes to be uniform on the same class of subjects within the territorial limits of the authority imposing them. Ibid.

Power of taxation of city of St. Louis is derived from the Constitution. Ibid.

Municipal assembly of St. Louis has power to enforce provisions of said ordinance by fine and imprisonment. Ibid.

Where board of supervisors of one year fail to make levy, it may be made in succeeding year, and will bind interim purchasers, 97.

A bond creditor of a municipal corporation can acquire by its failure to answer his petition, no greater or more extensive right than his right already existing to have his debt included in the budget for the next regular annual levy of taxes. Moore v. City of Memphis, 109.

Under the Missouri act of 1875 providing for the assessment of railroad property, and the collection of taxes thereon (Laws 1875, p. 120), county courts were not authorized to levy on railroad property owned August 1, 1876, the rates of taxation imposed on all other property owned August 1, 1875, for the year 1876. They could only extend the same rates levied on all other property owned August 1. 1876, for the year 1877. State v. Union Trust Co., 127.

Void tax voluntarily paid can not be recovered back, 237.

Payment pending amicable suit compulsory, and may be recovered back, 305.

Municipal corporation can not tax land beyond corporate limits for local purposes, 426.

An assessment of an entire tract of land owned by different persons is void, 427.

TAX SALES.

No estoppel against purchasing tax titles except as against one whose duty it is to pay the tax or remove the burden, 219.

A petition to enforce a lien of the State for back taxes, which does not allege that the land had been returned delinquent or forfeited to the State for non-payment of taxes, is defective. Such defective petition, however, is cured by verdict, and a judgment rendered thereon can not, for that reason, be attacked collaterally. Wellshear v. Kelly, 434.

The circuit court has jurisdiction to hear and determine suits for back taxes. Ibid.

While it is left undecided, whether the statutes of limitation can be pleaded against the State for back taxes, it is *held* that such defense can not be available against the title acquired under a judgment in favor of the State enforcing a lien therefor. Ibid.

Sales of lands for back taxes, under a judgment of the circuit court, are governed by the same rules, and subject to the same intendments as other judicial sales, and a purchaser thereunder need only look to the judgment, execution, levy and sheriff's deed. If they are right, all other questions are between the parties to the judgment and the sheriff. Ibid.

The act of 1877 is constitutional. The legislature has undoubted right to provide new and different remedies for the collection of back taxes, from that which the State had when the right to enforce the collections accrued. Ibid.

The neglect of the sheriff to sell the land in the smallest subdivisions, does not invalidate the sale. While such neglect might be good ground for setting a sale aside, it is too late to right it after a deed has been executed to the purchaser. Ibid.

TELEGRAPHIC MESSAGES.

Telegraphic messages are not exempt from the process of courts. B, the local manager of a telegraph office, was by a subpœna *duces tecum*, issued by the criminal court at the instance of the grand jury, ordered to search for and produce certain telegrams therein named, but he refused to examine the files of the office, or to produce the telegrams. The inquiry was for the purpose of finding indictments against persons other than B: *Held*, that the criminal court did not exceed its jurisdiction in committing B for contempt in refusing to obey the subpœna. *Ex parte* Brown, 378.

The statutes providing a punishment for the disclosure by an officer or a servant of a telegraph company of the contents of a dispatch and giving damages for the disclosure, do not apply to a case where the dispatches are called for by legal process, in which case any disclosure made is the act of the law, and not of the company. Ibid.

A call in a subpœna issued by a grand jury, for any and all messages passed between certain named parties during the last six months, is sufficiently certain without reference to the subject-matter. The obligation of secrecy imposed on the grand jury is a sufficient ground for not further indicating the subject-matter. Ibid.

Liability of company for delay of message left at way station, 445.

Measure of damage for failure to forward, 445.

TENDER.

Good, although exact amount not produced, 283.

TIME.

In computing time from act done, day on which it is done must be excluded, 329.

TORTS.

Second conveyance of the same land is a tort when made with intent to defeat the title under a prior valid conveyance executed by the same person, 178.

Finding that defendant, when he made the second conveyance, had forgotten the prior one, and did not intend to sell the land twice, will not sustain a judgment against him. Ibid.

TRADE MARKS.

The exclusive use of a tin pail, ornamented, and used to contain paper collars for sale, can not be claimed as a trade-mark, 367.

TRESPASS

Refusal to leave a dwelling-house when requested is a, 202.

Cutting and carrying away timber; measure of damages, 237.

TRIAL.

[See PLEADING AND PRACTICE.]

TROVER.

One who finds a swarm of bees in a tree on another's land, marks the tree and notifies the land-owner, can not maintain trover against the latter for taking the honey, 347.

TRUSTS AND TRUSTEES.

Rights of fraudulent purchaser of trust property, 179,

Liability of trustee for investing trust funds; in what securities must he invest, 235.

A conveyance of realty and other property in trust "for the purpose of founding an institution for the education of youth in St. Louis County, Mo," sustained. Russell v. Allen, 314.

Trustees who take stock in corporation are personally liable like other stockholders, 388.

Rights of purchaser of real estate without notice of an implied trust, 406.

Trust accepted by proceedings thereunder not disturbed by appointment of administrator, 507.

A declaration of trust operates to assign to the trustee the notes from which the trust fund is to be raised, even if not indorsed to him, 507.

TRUST DEEDS.

[See MORTGAGES.]

ULTRA VIRES.

[See NATIONAL BANKS.]

UNITED STATES COURTS.

[See JURISDICTION; PLEADING AND PRACTICE.]

USAGE.

A person who deals in a particular market, must be taken to deal according to the known, general and uniform custom of that market. Bailey v. Bensley, 50.

The usage and custom of the indiscriminate use of warehouse receipts not preserving their identity, not void as against public policy. Ibid.

Usage becomes a part of a contract only when the presumption arises that it was so intended. If the parties expressly or by implication exclude the usage, evidence of its existence is not admissible, 59.

A usage that is unreasonable does not become a part of the contract, 59.

When usage of trade binding on parties in absence of special agreement, 79.

USURY.

[See INTEREST.]

VENDOR AND PURCHASER.

Wrong description of location of property in deed; when vendee liable for injury sustained, 74.

Vendor, purchaser and sub-purchaser; delivery of goods to order of sub-purchaser who agrees to pay vendor direct; resumption of possession by vendor. 423.

VENUE.

[See PLEADING AND PRACTICE.]

VERDICT.

[See PLEADING AND PRACTICE.]

WAGERS.

[See also CONTRACTS.]

A promise to pay for property on happening of an uncertain event, not a wager, 178.

A court of chancery has jurisdiction to restrain the enforcement of a gaming contract, and enjoin the stockholder from paying over the money deposited in his hands. But the bill asking for such relief must show affirmatively that the money has not yet been paid over by the stockholder. Pettilon v. Hipple, 206.

Distinction between a preminum and a wager; former not illegal, 238.

Promissory note given by stockholder for amount of stakes in his hands, invalid, 465.

WAIVER.

[See INSURANCE.]

WAREHOUSEMEN.

Grain, on being received at a warehouse, is mixed with other grain of like quality, losing its identity, and a warehouse receipt can not be regarded as the property or as representing the property of the consignor on account of the receipt of whose grain it issued, so that parting with such particular receipt by consignee can be considered a disposal of consignor's property. Bailey v. Bensley, 50.

The usage and custom of the indiscriminate use of warehouse receipts not preserving their identity, not void as against public policy. Ibid.

WAREHOUSE RECEIPTS.

[See WAREHOUSEMEN.]

WARRANTY.

[See also SALES.]

On sale of leather which appeared to be sound, but which turned out to be rotten and worthless, no warranty, 20.

By indorsement on bill of sale, 39.

Sale by sample implies warranty that article sold is same as sample, 204.

Where a dealer contracts to supply a known and defined article, although it be stated by the buyer that such article is required for a particular purpose, if the known and defined thing be supplied, there is no warranty that it shall answer the particular purpose intended by the buyer. Wilson v Dunville, 375.

The defendant, a manufacturer of whisky, was in the habit of selling to the plaintiff refuse grains (produced in the course of the manufacture of whisky), as food for cattle, and the defendant knew that the grain was employed by the plaintiff for this purpose. A fire occurred on the premises of the defendant, which had the effect of causing the grains to become, without the knowledge of the defendant, mixed with a deleterious substance. The plaintiff purchased the grains so vitiated, and his cattle, in consequence of being fed therewith, died. *Held* that there was no implied warranty on the part of the defendant that the grains sold by him were fit for the purpose to which they were applied, inasmuch as the liability of the defendant was that of a dealer, and not of a manufacturer. Ibid.

WATERS AND WATERCOURSES.

A land owner has the exclusive right to fish in small lakes and ponds on his land; *aliter* as to large ones, 119.

License to public to fish in small lakes or ponds may be presumed, 119.

Right of riparian owner to construct booms, 236.

Right of action for obstructing flow of surface water, 265.

The rule of the English common law that owners of land situate on the banks of non-tidal streams, though navigable in fact, are owners of the beds of the rivers to the middle of the stream, is not applicable to the owners of land bounding on Lake Erie and Sandusky Bay. Sloan v. Beimiller, 396.

The right of fishing in Lake Erie and its bays is not limited to the proprietors of the shores; and the right of fishing in those waters is as public as if they were subject to the ebb and flow of the tide. Ibid.

The prima facie right of the public is not rebutted by proof of the mere uninterrupted enjoyment of the privilege of fishing for the period requisite to perfect a title by prescription; the mere lawful exercise of a common right for that period does not establish an exclusive right. Ibid

When no question arises in regard to the right of a riparian owner to build out beyond his strict boundary line, for the purpose of affording such convenient wharves and landing places in aid of commerce as do not obstruct navigation, the boundary of land in a conveyance calling for Lake Erie and Sandusky Bay, extends to the line at which the water usually stands when free from disturbing causes. Ibid.

WILLS.

Writings upon different parts of same sheet of paper, 55.

Conditional devise not void for uncertainty, 59.

Construction of word "enjoy" in a devise, 74.

A will can not be established by evidence of the declarations of the deceased that he had made a will. Mercer v. Mackin, 94, 106.

Omission to provide for heir at law in will, 97.

Where a widow elects not to take under her husband's will, she can take nothing in virtue of the bequests made to her by the will, in lieu of dower, 136.

Requisites of execution and attestation of will, 136.

Original will, and not copy from record of probate court, should be produced in proceedings to contest its validity, 136.

If in contest over a will, an alteration is found to have been made before its execution, then the paper writing as it reads after such alteration is the will; if made after such execution, and such alteration does not invalidate the instrument, then the jury should by special verdict establish the will as it read before such alteration, 136.

In proceedings to contest will, order of probate is *prima facie* evidence of its attestation, execution and validity, and burden of proof is on contestants, 136.

Query as to a will bequeathing estate to "my son John Gray, his heirs and assigns forever" bequest to be invested in real estate in name of his children, their heirs and assigns, 307; answers, 308, 428.

WILLS—Continued.

Where property has been devised by will to one for life, with power to dispose of by will or otherwise before his death, the only thing to be regarded in determining whether the disposal made is a sufficient execution of the power conferred, is the question of the intention of the donee of the power as shown by the wording of the will or evidence *aliunde*. Funk v. Eggleston, 169.

The old English rule, which regarded the appointment as a good execution of the power only in three cases, viz: 1st. Where there was a reference to the power in the will of the donee; or, 2d, where there was a reference to the property covered by the power in the will of the donee; or, 3d, where the instrument would be inoperative without the aid of the power, is narrow and should not be followed. Ibid.

Reformation of will; mistake, 178.

The will of the testator, after bequeathing to his wife all his real and personal estate during her life, contained this provision: "The foregoing bequest is made under the express proviso that my said wife * * * * will carry on and continue my business with my co-partners; but I will that no part of my real estate, still less the whole of it, be sold or otherwise disposed of before the lapse of twenty years." *Held*, that the power thus impliedly given to sell the real estate did not enlarge the wife's interest to an estate in fee. Reinders v. Koppelmann, 245.

The word "heirs" in a will construed, 245.

An innocent purchase under a forged will takes a valid title. Steele v. Rann, 275.

A religious corportion may take by devise, 347.

A person has a right by fair argument to induce another to make a will in his own favor, 372.

Meaning of the phrase "of sound and disposing mind and memory," 372.

A bequest to trustees for such charitable purposes as they shall designate is invalid, 427.

In a suit to set aside a will, on the ground of want of capacity and undue influence exercised upon the testator, evidence of declarations made by the testator, near to the time of both before and after the execution of the will, are admissible, not for the purpose of showing an express revocation of the will, or the fact that it was executed under undue influence, but in order to show his mental condition near to, or at the time of the execution of the will. Reynolds v. Adams, 437.

A devise to "children" will not include illegitimate children, 462.

Where a charitable bequest was equivocal, there being two charities answering the description: *Held*, that the fact that the testatrix had, on one occasion, subscribed to one of them, was sufficient to turn the scale in favor of that society, 462.

Construction of will; legacy to be paid at "maturity" of female, 464.

A bequest of a fund to trustees, to be applied towards "feeding, clothing, and educating the poor children belonging to the congregation of St. Peter's Protestant Episcopal Church of Baltimore," is void, 471.

The testator, by his will, after making his wife residuary devisee, and otherwise providing for her, added that it was his "will and desire" that she should pay his nephew "for the purpose of educating him," a certain sum annually, commencing at a fixed date until he came of age. The nephew died over two years after that date, but before he came of age. *Held*, that the legacy was valid, and a personal charge on the wife, but ceased on the death of the legatee, 472.

Construction of will; marshalling of testamentary assets, 504

Can a valid *donatio mortis causa* be made of a bank check? Query, 240; answers, 288, 328, 368, 488.

WITNESSES.

[See EVIDENCE.]

WOMEN.

Credibility of, as witnesses, 108.

WORDS AND PHRASES.

[See INTERPRETATION.]

WRITTEN INSTRUMENTS.

[As to how far written instruments are subject to parol evidence, see EVIDENCE. As to construction of particular words in written instruments, see INTERPRETATION.]